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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,810	01/17/2006	Marc Schwaller	3493-0147PUS1	1921
2292	7590	08/17/2006	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			MCCORMICK, MELENIE LEE	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/527,810	SCHWALLER, MARC	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melenie McCormick	1655	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>13 July 2005</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

### **DETAILED ACTION**

Claims 1-16 are presented for examination on the merits.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4-9, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 4-9, the word advantageously renders the claims indefinite, as it is not clear if the phrase which follows the word advantageously is intended to be a limitation in claim. In claim 14, the phrase "characterized in that it can be obtained according to the process" renders the claim indefinite because it is not clear if the composition is or is not obtained by the recited process. Also in claim 14, the word optionally in line 3 renders the claim indefinite because it is not clear if soybean lecithin is or is not added. One of ordinary skill in the art would not be able to determine the metes and bounds of the claim.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belle et al. (FR 2,832,418), Duranton et al. (US 6,465,421), Francis (US 5,695,748), and Segelman (US 6,017,893).

A composition comprising at least one marrow oil, at least one borage oil, nettle extract, and soybean extract is claimed.

Belle et al. beneficially teach a squash (marrow) oil for use as a medication which can be administered orally or topically (see e.g. p. 7 of English translation). Belle et al. further beneficially teach that the composition (medication) is intended to treat alopecia (see e.g. claim 8 and p. 8 of English translation). Belle et al. also beneficially teach that the composition comprises between 1 to 100% or 0.01% to 30% by weight of squash oil (see e.g. p. 8 of English translation). It is also disclosed by Belle et al. that the composition may be in the form of a cosmetic, food, dermatological composition for topical administration, or pharmaceutical composition for oral administration such as a capsule (see e.g. p. 8 of English translation).

Duranton et al. beneficially teach a composition which has hair growth-modulating properties (see e.g. col 1, lines 17-18). Duranton et al. further beneficially teach that the composition is intended to promote the growth of hair and that the composition contains borage oil (see e.g. claim 1).

Francis beneficially teaches a mixture (composition) which contains nettle and is used for restoring hair growth (see e.g. claim 1). It is further beneficially taught by Francis that the nettle can be in the form of a powder (see e.g. col 3, lines 13-16).

Segelman beneficially teaches a composition for preventing and treating hair loss (see e.g. col 1, lines 11-15). Segelman further beneficially teaches that the composition may be used topically or orally (see e.g. col 1, lines 60-65). It is further disclosed by Segelman that the composition is made from soybeans in powdered form and contains isoflavones (see e.g. col 7, example ii).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit- i.e. treating hair loss/alopecia -since each is well known in the art for the same purpose and for the following reasons. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose (as well as to use the combination for that purpose). The idea for combining them flows logically from their having been used individually in the prior art. In re Sussman, 1943 C.D. 518; In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960). This rejection is based upon the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. The adjustment of particular conventional working conditions (e.g. the particular result effective concentration of each component or the particular part of the herb from which each

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extract is derived) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

***Conclusion***

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melenie McCormick whose telephone number is (571) 272-8037. The examiner can normally be reached on M-F 7:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**CHRISTOPHER R. TATE**  
**PRIMARY EXAMINER**